

108TH CONGRESS
2D SESSION

H. R. 4571

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2004

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To amend Rule 11 of the Federal Rules of Civil Procedure
to improve attorney accountability, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Lawsuit Abuse Reduc-
3 tion Act of 2004”.

4 **SEC. 2. ATTORNEY ACCOUNTABILITY.**

5 Rule 11 of the Federal Rules of Civil Procedure is
6 amended—

7 (1) in subdivision (c)—

8 (A) by amending the first sentence to read
9 as follows: “If a pleading, motion, or other
10 paper is signed in violation of this rule, the
11 court, upon motion or upon its own initiative,
12 shall impose upon the attorney, law firm, or
13 parties that have violated this subdivision or are
14 responsible for the violation, an appropriate
15 sanction, which may include an order to the
16 other party or parties to pay for the reasonable
17 expenses incurred as a direct result of the filing
18 of the pleading, motion, or other paper, that is
19 the subject of the violation, including a reason-
20 able attorney’s fee.”;

21 (B) in paragraph (1)(A)—

22 (i) by striking “Rule 5” and all that
23 follows through “corrected.” and inserting
24 “Rule 5.”; and

25 (ii) by striking “the court may award”
26 and inserting “the court shall award”; and

(C) in paragraph (2), by striking “shall be limited to what is sufficient” and all that follows through the end of the paragraph (including subparagraphs (A) and (B)) and inserting “shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the parties that were injured by such conduct. The sanction may consist of an order to pay to the party or parties the amount of the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorney’s fee.”; and

(2) by striking subdivision (d).

SEC. 3. APPLICABILITY OF RULE 11 TO STATE CASES AFFECTING INTERSTATE COMMERCE.

In any civil action in State court, the court, upon motion, shall determine within 30 days after the filing of such motion whether the action affects interstate commerce. Such court shall make such determination based on an assessment of the costs to the interstate economy, including the loss of jobs, were the relief requested granted. If the court determines such action affects interstate com-

merce, the provisions of Rule 11 of the Federal Rules of Civil Procedure shall apply to such action.

SEC. 4. PREVENTION OF FORUM-SHOPPING.

(a) IN GENERAL.—Subject to subsection (b), a personal injury claim filed in State or Federal court may be filed only in the State and, within that State, in the county (or Federal district) in which—

(1) the person bringing the claim, including an estate in the case of a decedent and a parent or guardian in the case of a minor or incompetent—

(A) resides at the time of filing; or

(B) resided at the time of the alleged injury; or

(2) the alleged injury or circumstances giving rise to the personal injury claim allegedly occurred; or

(3) the defendant's principal place of business is located.

(b) DETERMINATION OF MOST APPROPRIATE FORUM.—If a person alleges that the injury or circumstances giving rise to the personal injury claim occurred in more than one county (or Federal district), the trial court shall determine which State and county (or Federal district) is the most appropriate forum for the claim. If the court determines that another forum would

1 be the most appropriate forum for a claim, the court shall
2 dismiss the claim. Any otherwise applicable statute of limi-
3 tations shall be tolled beginning on the date the claim was
4 filed and ending on the date the claim is dismissed under
5 this subsection.

6 (c) DEFINITIONS.—In this section:

7 (1) The term “personal injury claim”—

8 (A) means a civil action brought under
9 State law by any person to recover for a per-
10 son’s personal injury, illness, disease, death,
11 mental or emotional injury, risk of disease, or
12 other injury, or the costs of medical monitoring
13 or surveillance (to the extent such claims are
14 recognized under State law), including any de-
15 rivative action brought on behalf of any person
16 on whose injury or risk of injury the action is
17 based by any representative party, including a
18 spouse, parent, child, or other relative of such
19 person, a guardian, or an estate; and

20 (B) does not include a claim brought as a
21 class action.

22 (2) The term “person” means any individual,
23 corporation, company, association, firm, partnership,
24 society, joint stock company, or any other entity, but
25 not any governmental entity.

1 (3) The term “State” includes the District of
2 Columbia, the Commonwealth of Puerto Rico, the
3 United States Virgin Islands, Guam, and any other
4 territory or possession of the United States.

5 (d) APPLICABILITY.—This section applies to any per-
6 sonal injury claim filed in Federal or State court on or
7 after the date of the enactment of this Act.

8 **SEC. 5. RULE OF CONSTRUCTION.**

9 Nothing in section 3 or in the amendments made by
10 section 2 shall be construed to bar or impede the assertion
11 or development of new claims or remedies under Federal,
12 State, or local civil rights law.

13 **SEC. 6. THREE-STRIKES RULE FOR SUSPENDING ATTOR-**
14 **NEYS WHO COMMIT MULTIPLE RULE 11 VIO-**
15 **LATIONS.**

16 (a) MANDATORY SUSPENSION.—Whenever a Federal
17 district court determines that an attorney has violated
18 Rule 11 of the Federal Rules of Civil Procedure, the court
19 shall determine the number of times that the attorney has
20 violated that rule in that Federal district court during that
21 attorney’s career. If the court determines that the number
22 is 3 or more, the Federal district court—

23 (1) shall suspend that attorney from the prac-
24 tice of law in that Federal district court for 1 year;
25 and

1 (2) may suspend that attorney from the prac-
2 tice of law in that Federal district court for any ad-
3 ditional period that the court considers appropriate.

4 (b) APPEAL; STAY.—An attorney has the right to ap-
5 peal a suspension under subsection (a). While such an ap-
6 peal is pending, the suspension shall be stayed.

7 (c) REINSTATEMENT.—To be reinstated to the prac-
8 tice of law in a Federal district court after completion of
9 a suspension under subsection (a), the attorney must first
10 petition the court for reinstatement under such procedures
11 and conditions as the court may prescribe.

12 **SEC. 7. ENHANCED SANCTIONS FOR DOCUMENT DESTRUC-**
13 **TION.**

14 (a) IN GENERAL.—Whoever willfully and inten-
15 tionally influences, obstructs, or impedes, or attempts to
16 influence, obstruct, or impede, a pending court proceeding
17 through the willful and intentional destruction of docu-
18 ments sought in, and highly relevant to, that proceeding
19 shall be punished with mandatory civil sanctions of a de-
20 gree commensurate with the civil sanctions available under
21 Rule 37 of the Federal Rules of Civil Procedure, in addi-
22 tion to any other civil sanctions that otherwise apply.

1 (b) APPLICABILITY.—This section applies to any
2 court proceeding in any Federal or State court.

Passed the House of Representatives September 14,
2004.

Attest:

JEFF TRANDAHL,
Clerk.